

REMARKS

Claims 1 – 38 are pending in the present application. Claims 1, 8, 10, 13, 15, 21, 22, 23, 26, 28, 33, 35 and 37 have been amended. Claims 20, 25 and 30 have been canceled. No new matter has been introduced by these amendments. In the Office Action mailed 3/26/08, the Examiner rejected claims 1, 5-7, 8, 10, and 12- 13 under 35 U.S.C. 102 as being anticipated by Piirainen; The Examiner rejected claims 15-18, 21, 23-24, 26-29, and 31-38 under 35 U.S.C. 102 as being anticipated by Kim (US 20040114691 A1); The Examiner rejected claims 2-4, 7, 9, 11, and 14 under 35 U.S.C. 103(a) as being unpatentable over Piirainen in view of Walton et al; The Examiner rejected claim 19 under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Piirainen (US 7,031,419 B2); and the Examiner rejected claims 20, 22, 25, 30 under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Walton et al.

Applicants respectfully respond to the Office Action.

Claim Rejections – 35 USC §102

Claims 1, 5-7, 8, 10, and 12- 13 were rejected under 35 U.S.C. 102 as being anticipated by Piirainen (US 7,031,419 B2).

Claims 1, 10 and 13 have been amended to include the feature “transmitting multiple data packets in an interlaced manner.” Support for this amendment is found in paragraph [0042]. This feature is not disclosed by Piirainen. Since all the features of claims 1, 10 and 13 are not disclosed by Piirainen, Piirainen does not anticipate claims 1, 10 and 13.

With respect to claim 8, the Office Action states “Piirainen teaches a method . . . wherein each of the at least two symbol blocks for the at least two data packets is transmitted diagonally across a plurality of subbands and the plurality of transmit antenna,” and cites col. 4, lines 18-19. Col. 4, lines 18-19 discloses that OFDM can be used as the multiple access method used by Piirainen. Col. 4, lines 18-19 does not disclose transmitting each of the at least two symbol blocks for the at least two data packets diagonally across a plurality of subbands and the plurality of transmit antenna. Since all the features of claim 8 are not disclosed by Piirainen, Piirainen

does not anticipate claim 8. Claim 8 has been rewritten into independent form to include the features of previously unamended claim 1. Claims 5-7, and 12 are allowable because they depend on allowable claims.

Claims 15-18, 21, 23-24, 26-29, and 31-38 were rejected under 35 U.S.C. 102 as being anticipated by Kim (US 20040114691 A1).

With respect to claim 21, the Office Action states “Kim teaches “determining the rate based on the average spectral efficiency for the plurality of transmit antennas and cites paragraphs 5 and 6. Applicant respectfully disagrees with the Office Action. “Determining the rate based on the average spectral efficiency for the plurality of transmit antennas” is not disclosed in paragraphs 5 and 6 of Kim. Instead, paragraph 5 of Kim discloses “although a data transmission speed can be increased, a signal power needs to be reduced . . .” Since all the features of claim 21 are not disclosed by Kim, Kim does not anticipate claim 21. Claim 21 has been rewritten into independent form to include the features of previously unamended claim 15.

Claim 15 has been amended to include the features of claim 20. (See below the reasons why claim 20 is allowable). Claim 20 has been canceled. Claim 22 has been amended to depend on claim 15. Since all the features of claim 15 are not disclosed by Kim, Kim does not anticipate claim 15. Claims 16-19 and 22 are also allowable since they depend on allowable claim 15.

Claims 23 and 33 have been amended to include the features of claim 25. (See below the reasons why claim 25 is allowable). Claim 25 has been canceled. Since all the features of claims 23, and 33 are not disclosed by Kim, Kim does not anticipate claims 23 and 33. Claims 24 and 34 are also allowable since they depend on allowable claim 23 and 33 respectfully.

Claims 28 and 37 have been amended to include the features of claim 30. (See below the reasons why claim 30 is allowable). Claim 30 has been canceled. Since all the features of claims 28 and 37 are not disclosed by Kim, Kim does not anticipate claims 28 and 37. Claims 29, 31, 32 and 38 are also allowable since they depend on an allowable claim.

Claims 26 and 35 have been amended to include the features “means for obtaining channel estimates for a MIMO channel between the plurality of transmit antennas and the plurality of receive antennas; and means for selecting, based on the channel estimates, a rate for data transmission on the MIMO channel.” Since all the features of claims 26 and 35 are not disclosed by Kim, Kim does not anticipate claims 26 and 35. Claims 27 and 36 are also allowable since they depend on an allowable claim.

Claim Rejections – 35 USC §103

Claims 2-4, 7, 9, 11, and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Piirainen in view of Walton et al (20040136349 A1).

Walton et al (20040136349 A1) was filed on October 23, 2003 and published on July 15, 2004. The present patent application was filed on March 15, 2004. Walton does not qualify as prior art under 103(a). It was published after the filing date of the present patent application. See MPRP 2141.01. Furthermore, it cannot be used as a 102(e) reference because both Walton et al. and the present patent application “were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” See 35 USC 103(c)(1). Therefore, Walton does not qualify as prior art under 103(c). Thus, claims 2-4, 7, 9, 11, and 14 are patentable over Piirainen in view of Walton et al.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Piirainen (US 7,031,419 B2).

Claim 19 is allowable because it depends on allowable claim 15.

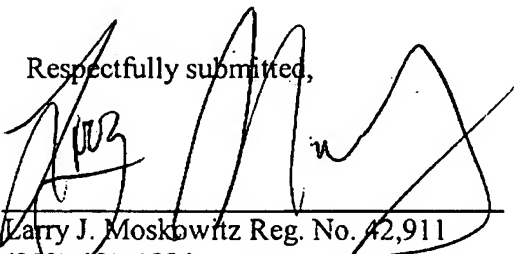
Claims 20, 22, 25, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Walton et al. (US 20040136349 A1).

As stated above, Walton does not qualify as prior art under 103(a). Thus, claims 20, 22, 25 and 30 are patentable over Kim in view of Walton et al.

CONCLUSION

In view of the foregoing, Applicant submits that all pending claims in the application are allowable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below. Applicant does not believe that any fees are due with this response. If, however, it is determined that fees are owed, please charge any fees or overpayments that may be due to Deposit Account No. 17-0026.

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